

109TH CONGRESS
1ST SESSION

H. R. 4618

To amend the Securities Exchange Act of 1934 to establish rules and procedures for the delegation of compliance and inspections authority to the operating divisions of the Securities and Exchange Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2005

Mr. FOSSELLA (for himself and Mr. CASTLE) introduced the following bill;
which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to establish rules and procedures for the delegation of compliance and inspections authority to the operating divisions of the Securities and Exchange Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Compliance, Examina-
5 tions, and Inspections Restructuring Act of 2005”.

1 **SEC. 2. ORGANIZATION AND CONDUCT OF THE DIVISIONS**
2 **AND OFFICES OF THE SECURITIES AND EX-**
3 **CHANGE COMMISSION.**

4 Section 4 of the Securities Exchange Act of 1934 (15
5 U.S.C. 78d) is amended by adding at the end the following
6 new subsections:

7 “(g) DIVISIONS AND OFFICES OF THE COMMIS-
8 SION.—

9 “(1) COMPLIANCE, INSPECTIONS, AND EXAMI-
10 NATIONS.—The authority that the Commission has
11 to conduct inspections and examinations of reg-
12 istered brokers or dealers (15 U.S.C. 78q(b)), reg-
13 istered investment companies (15 U.S.C. 80a–
14 30(b)), and registered investment advisers (15
15 U.S.C. 80b–4) shall be vested in the administrative
16 divisions or offices to which the Commission has del-
17 egated pursuant to section 4A of this Act the au-
18 thority to administer its responsibilities under this
19 Act, the Investment Company Act of 1940 (15
20 U.S.C. 80a), and the Investment Advisers Act of
21 1940 (15 U.S.C. 80b). The Commission shall report
22 to Congress pursuant to section 21(a) of this Act no
23 less frequently than every 5 years from the enact-
24 ment of this subsection, and shall in that report
25 state its views on the continuing efficacy, effective-
26 ness, and efficiency of requiring the administrative

1 divisions or offices to conduct inspections and exami-
2 nations of registered brokers or dealers, registered
3 investment companies, and registered investment ad-
4 visers.

5 “(2) CLOSURE OF OPEN MATTERS.—Not less
6 frequently than every 120 days during a period in
7 which an enforcement division or office of the Com-
8 mission with respect to a formal or informal inquiry,
9 or an administrative division or office of the Com-
10 mission with respect to an inspection or examina-
11 tion, is conducting an inquiry or inspection, that di-
12 vision or office shall notify in writing the person who
13 is the subject of that inquiry or inspection to inform
14 such person of the status of the inquiry or inspec-
15 tion. When that division or office has completed its
16 inquiry or inspection, that division or office shall,
17 within 10 days of completing that inquiry or inspec-
18 tion, notify in writing the person who was the sub-
19 ject of that inquiry or inspection that the inquiry or
20 inspection has been completed.

21 “(3) SWEEP EXAMINATIONS OR INSPECTIONS.—

22 “(A) NOTICE AND APPROVAL.—Before an
23 administrative division or office of the Commis-
24 sion may conduct an inspection of registered
25 brokers or dealers, registered investment com-

panies, or registered investment advisers, it shall provide written notification in such form determined by the Chairman. Before an administrative division or office of the Commission may conduct a sweep examination of registered brokers or dealers, registered investment companies, or registered investment advisers, it shall seek authority from the Commission to conduct such a sweep examination or inspection in the same manner and subject to the same procedures that the enforcement divisions or offices of the Commission must follow in seeking the authority to conduct a formal investigation or inquiry regarding a registered brokers or dealer, a registered investment company, or a registered investment adviser.

“(B) CONTENT.—An administrative division or office of the Commission shall confine the content of a sweep examination or inspection to those existing books and records that the registered broker or dealer, registered investment company, or registered investment adviser is required to keep and maintain under applicable rules and regulations, and may not require the creation of a new document or the

1 calculation or presentation of data that is not
2 required to be kept or maintained under appli-
3 cable rules and regulations.

4 “(4) DEFINITIONS.—For purposes of this sub-
5 section, the following definitions shall apply:

6 “(A) CONFIDENTIAL COMMUNICATION.—

7 The term ‘confidential communication’ shall
8 mean any transfer of information, regardless of
9 the form or format in which the information is
10 communicated to an officer or employee of a
11 compliance and inspections office, about a reg-
12 istered broker or dealer, registered investment
13 company, or registered investment adviser by
14 an officer or employee of a registered broker or
15 dealer, registered investment company, or reg-
16 istered investment adviser regarding whether
17 the broker or dealer, investment company, or
18 investment adviser is in compliance with appli-
19 cable provisions of this Act, the Securities Act
20 of 1933, the Investment Company Act of 1940,
21 or the Investment Advisers Act of 1940, where-
22 in the officer or employee transferring such in-
23 formation reasonably believes in good faith that
24 the information being communicated to an offi-

cer or employee of a compliance and inspections
office of the Commission—

“(i) is not information required to be
made publicly available by any applicable
Federal law or regulation; or

“(ii) is information regarding any
book, record, or other information in the
possession of, or maintained on behalf of,
the registered broker or dealer, registered
investment company, or registered invest-
ment adviser that is subject to the exam-
ination and inspection authority of the
Commission.

“(B) SWEEP EXAMINATION.—Not later
than 60 days after the date of enactment of
this subsection, the Commission shall define the
term ‘sweep examination’ for purposes of this
subsection.

“(C) ENFORCEMENT DIVISION.—The term
‘enforcement division’ means the divisions or of-
fices to which the Commission has delegated
pursuant to section 4A of this Act the authority
to investigate and to enforce the provisions of
this Act, the Investment Company Act of 1940

1 (15 U.S.C. 80a–41), and the Investment Advis-
2 ers Act of 1940 (15 U.S.C. 80b–9).

3 “(h) OMBUDSMAN.—

4 “(1) APPOINTMENT.—Not later than 180 days
5 after the date of enactment of this section, the
6 Chairman of the Securities and Exchange Commis-
7 sion shall appoint an Ombudsman who shall report
8 directly to the Chairman.

9 “(2) DUTIES OF OMBUDSMAN.—The Ombuds-
10 man appointed under subsection (a) shall—

11 “(A) ensure safeguards exist to encourage
12 persons who are issuers registered brokers or
13 dealers, registered investment companies, or
14 registered investment advisers to present ques-
15 tions to the Commission regarding compliance
16 with the securities laws;

17 “(B) maintain privilege of confidential
18 communications between such persons and the
19 Ombudsman;

20 “(C) advise and guide such persons
21 through the process of self-reporting, ensuring
22 appropriate and due credit is given to the reg-
23 istrant upon self-reporting; and

24 “(D) act as a liaison between the agency
25 and such persons with respect to any problem

1 such registrant may have in dealing with the
2 agency resulting from the regulatory activities
3 of the agency.

4 “(3) LIMITATION.—In carrying out the duties
5 under paragraph (1), the Ombudsman shall utilize
6 personnel of the Commission to the extent prac-
7 ticable. Nothing in this section is intended to re-
8 place, alter, or diminish the activities of any om-
9 budsman or similar office in any other agency.

10 “(4) DISCLOSURE OF CONFIDENTIAL COMMU-
11 NICATIONS.—Notwithstanding any other provision of
12 this subsection, in those circumstances where the
13 most senior officer of the enforcement division or of-
14 fice of the Commission has made a formal rec-
15 ommendation in writing to the Commission that it
16 exercise its authority in section 21(d)(1) to seek an
17 injunction against a registered broker or dealer, its
18 authority in section 42(d) of the Investment Com-
19 pany Act of 1940 to seek an injunction against a
20 registered investment company, or its authority in
21 section 209(d) of the Investment Advisers Act of
22 1940 to seek an injunction against a registered in-
23 vestment adviser, the Ombudsman or an employee of
24 the Ombudsman shall disclose to the officers and
25 employees of any other division or office any con-

1 fidential communications received from an officer or
2 employee of a registered broker or dealer, a reg-
3 istered investment company, or a registered invest-
4 ment adviser pursuant to the provisions of Section
5 24(b).

6 “(5) REPORT.—Each year, the Ombudsman
7 shall submit a report to the Commission for inclu-
8 sion in the annual report that describes the activi-
9 ties, and evaluates the effectiveness of the Ombuds-
10 man during the preceding year. In that report, the
11 Ombudsman shall include solicited comments and
12 evaluations from registrants in regards to the effec-
13 tiveness of the Ombudsman.”.

14 **SEC. 3. SENSE OF CONGRESS.**

15 It is the sense of Congress that the Securities and
16 Exchange Commission should develop and publish guide-
17 lines setting forth explicitly the benefit that an issuer the
18 securities of which are registered under section 12 of the
19 Securities Exchange Act of 1934, a registered broker-deal-
20 er, a registered investment company, or a registered in-
21 vestment adviser shall receive if it self-reports to an ad-
22 ministrative division or office of the Commission or to an
23 enforcement division or office of the Commission an ap-
24 parent violation of law, rules, or regulations applicable to
25 it and is subsequently the respondent in a civil injunctive

- 1 action or administrative proceeding brought by the Com-
- 2 mission with respect to the matter that was self-reported.

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